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## OVERVIEW

A person who is the subject of a report or record made under the Child Protection Law (CPL) may request amendment or expunction of an inaccurate report or record. Primary responsibilities and duties contained in this policy are that of the Expungement Unit.

## DEFINITIONS

### ***Administrative Review***

For purposes of this policy, a review of the case record conducted by the department.

### ***Administrative Hearing***

For purposes of this policy, a hearing conducted by an Administrative Law Judge (ALJ).

### ***Administrative Law Judge***

Any person assigned by the hearing system to preside over and hear a contested case or other matter assigned, including, but not limited to, tribunal member, hearing officer, presiding officer, referee, and magistrate.

## ADMINISTRATIVE REVIEW

Upon receipt of a written request for amendment/expunction of case record or report, the expungement analyst must review the electronic case record within two business days of assignment to determine if additional documents need to be requested from the local office to complete the administrative review request. See [Expunction and Administrative Hearing Procedures](#) policy job aid for the administrative review process.

An assessment must be made by the expungement unit as to whether the case has sufficient evidence to support the dispositional findings. The findings must be supported and applied correctly based on CPL and policy that was in place at the time of the finding. All factors must be considered including the credibility of witness statements. All supporting evidence provided by the requestor must be reviewed prior to rendering a determination.

Contact must be made with those individuals necessary to discuss and verify pertinent information in rendering a decision. The following individuals include but are not limited to:

- The requestor.
- Witnesses.
- Assigned CPS specialist and/or supervisor.

### **Expungement Decision and Second Line Review**

The reviewing expungement analyst is to have a case consultation with the expungement supervisor to discuss their decision based on the completed review. The expungement analyst must contact the local county office director or their designee to discuss the decision of amendment or expungement.

If there is not a consensus, the request will be brought to the BSC director's attention for further review.

### **Decision Notification - No Hearing Needed**

If the decision is made to amend or expunge the case record, including removal from central registry, the completed DHHS-1200, *Child/Abuse Neglect - Central Registry Expunction Action*, will be sent to the local office point of contact. The local office point of contact will mail the requestor the DHHS-1200, *Child Abuse/Neglect - Central Registry Expunction Action*.

For confirmed cases regarding individuals not placed on central registry, the DHS-1200c, *Confirmed Case Amendment Action*, will be mailed to the requestor by the expungement unit.

### **Amendment of Case Record**

The intake/Central Registry (CR) hyperlinks must be completed, and all proper documentation uploaded including:

- DHS-847a, *Notice of Placement on Central Registry*, signed by the petitioner.
- DHS-847c, *Notice of a Confirmed Case*, signed by the petitioner.

- Initial Service Plan.
- Supporting documentation.
- DHHS-1200, *Child Abuse/Neglect - Central Registry Expunction Action*.
- DHS-1200c, *Confirmed Case Amendment Action*, for confirmed cases that do not result in central registry placement.

### Denial of Request to Amend or Expunge

#### ***Central registry cases***

If the decision is to deny the request to amend or expunge from CR, the expungement analyst is to complete all hearing packet paperwork required to process for an administrative hearing. See below *Administrative Hearing Request* section.

#### ***Confirmed cases***

After the administrative review process has been exhausted and the decision is to deny the request to amend a case record for an individual that is subject to the record or report of a confirmed case, the expungement unit will send the DHS-1200c, *Confirmed Case Amendment Action*, with determination and notification that the requestor has 30 calendar days from date of service on the DHS-1200c to request an administrative hearing.

### ADMINISTRATIVE HEARING REQUEST

The expungement analyst is responsible for completing and sending the hearing packet to Michigan Office of Administrative Hearing and Rules (MOAHR) The packet must include the following:

- Cover sheet identifying the case.
- DHS-3050, *Hearing Summary* and following information:
  - Date of complaint.
  - Date of disposition.

- Date of placement on CR.
  - Copy of the notice to the perpetrator.
  - The allegations of abuse or neglect.
  - Name and date of birth of the victim(s).
  - Name and date of the perpetrator(s).
  - Name of each witness (unless that would put the witness in danger).
  - Prior administrative or judicial decisions on the alleged abuse/neglect, including prior decisions regarding requests for amendment or expunction involving the same placement on the central registry.
- County in which the client resides.
  - Assigned expungement analyst name and contact information.

The DHS-3050 and hearing packet must be sent to MOAHR via email at: [MOAHR-BSD@michigan.gov](mailto:MOAHR-BSD@michigan.gov).

The expungement analyst must also email the hearing packet to the Children's Services Legal Division at [CSARequestforRepresentation@michigan.gov](mailto:CSARequestforRepresentation@michigan.gov) mailbox if the petitioner is being represented by counsel.

**Note:** The hearing packet must also comply with [SRM 131, Confidentiality](#) requirements and Administrative Hearing rules for redaction.

A hearing packet must be emailed to the local county point of contact by the expungement analyst. The point of contact will send the packet to the petitioner via regular mail.

The expungement analyst will upload the hearing packet within the electronic case record in the Amendment/Expungement Document hyperlink.

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**Michigan Office of  
Administrative  
Hearing and Rules  
(MOAHR)  
Response to  
Hearing Requests**

Only MOAHR has the authority to grant or deny the hearing request. MOAHR informs the petitioner and the local office in writing when a request is granted or denied. If the hearing request is granted, MOAHR will issue a Notice of Hearing giving the date, time, and location of the hearing. MOAHR denies requests signed by unauthorized persons and requests without original signatures (faxes or photocopies of signatures are acceptable).

**Note:** Staff must not call or email the Administrative Law Judge (ALJ) assigned to a hearing for any reason. Once a case is scheduled, any questions regarding the case must be directed to the MOAHR secretaries at (517) 373-0722.

**Representation in  
Administrative  
Hearings**

An assistant attorney general **must** be requested to represent the department in all administrative hearings where the petitioner is represented by counsel. Complete the DHS-1216 E, *Request for Attorney General Representation*, and send it, along with supportive materials to the Children's Services Legal Division's [CSARequestforRepresentation@michigan.gov](mailto:CSARequestforRepresentation@michigan.gov) mailbox.

If the opposing party is represented by counsel at an administrative hearing and the department's authorized employee is not, the department must request an adjournment from the ALJ so that the department may request representation by counsel.

The expungement analyst will provide the assigned assistant attorney general assistance in coordinating conference calls, obtaining documentation, including the hearing packet and case recommendations.

**Petitioner Access  
to Information**

The petitioner has the right to review investigation reports and obtain copies of needed documents and materials. After confidential information has been redacted (see [SRM 131](#),

[Confidentiality - Children's Services](#)), send a copy of all documents and records that will be used by the department to the petitioner and/or the petitioner's attorney, including a copy of the DHS-3050.

## Pre-Hearing Conference

The assigned expungement analyst is required to schedule a pre-hearing conference with the petitioner once the decision has been made to deny the request to amend or expunge the case record and prior to an administrative hearing.

The expungement analyst will need to gather information from the petitioner if they have or will be obtaining representation in this matter. The pre-hearing conference must occur within 30 calendar days upon receipt of the request.

A pre-hearing conference does not need to be held in the following situations:

- The petitioner chooses not to attend the pre-hearing conference. The petitioner is not required to participate in the pre-hearing conference in order to have a hearing. This must be explained in any notice of the pre-hearing conference.
- A conference was held prior to the receipt of the request for hearing and:
  - The issue in dispute is clear.
  - Michigan Department of Health and Human Services (MDHHS) staff fully understands the positions of both the department and the petitioner.

The pre-hearing conference may be used to clarify the issues for the department and the petitioner. All of the following, actions must occur at the pre-hearing conference:

- Determine why the petitioner is disputing the MDHHS action.
- Review any documentation the petitioner offers in support of his/her request for hearing.
- Explain the department's position and identify and discuss the differences.
- Determine whether the dispute can be resolved prior to submission of the matter to MOAHR for administrative hearing.

The expungement analyst must participate in a pre-hearing conference with the Administrative Law Judge, if required.

## PREPARATION FOR HEARING

The expungement analyst is responsible for the following in preparation of an administrative hearing:

- Drafting the questions for the testimony of witnesses.
- Completing the MDHHS-5602, *Payment Request* form, for witness fees.
  - Witness fees remain the responsibility of the local office.
- Preparing witnesses for the hearing.
- If necessary, requesting and ensuring delivery of subpoenas for witnesses to testify in coordination of the local office established contact. See below *subpoenas*.
- Determine necessary exhibits.
- Case consultation between the expungement analyst, expungement supervisor, and local office supervisor will occur to discuss any conflicts.

### ***Notification Requirements***

When a hearing date is identified, information will be updated within the Administrative Hearings Calendar as well as notification to the local county office designee and witnesses. If the expungement analyst is unable to attend a hearing, immediate (within 24 hours or the next business day) notification is to be made to the expungement supervisor.

### ***Subpoenas***

If the local office requires a person outside of MDHHS to testify at the hearing or to obtain a document outside of MDHHS to be offered as evidence, the local office must send a memo requesting a subpoena to MOAHR including:

- Case name (for example, Jane Doe v. Ingham County MDHHS).

- Docket number.
- The name and address of the person whose testimony is required.
- The document to be subpoenaed.
- The reason the person or document is needed.
- The manner in which the person's testimony or document relates to the hearing issue.
- A copy of the notice of hearing, if available.

Allow adequate time to mail or hand deliver the subpoena. Do not send a copy of the entire witness list with subpoena requests.

The requestor must serve the subpoena and must pay the attending witness fee plus the state-approved mileage rate from and to the person's residence in Michigan.

Depending on the type of service used by the department to issue the subpoena (i.e. personal, registered mail, certified/return receipt requested, etc.), checks must be attached to the subpoena or provided to the witness at the hearing. In no circumstances should the witness have to provide testimony prior to receiving the appropriate payment.

Witnesses are not required to be registered in SIGMA to receive payment. To request a check for witness fees and related travel, staff need to complete an MDHHS-5602. The "Agency Local Print" box located under the "Vendor Information" header must be marked "Yes." Completed requests must be submitted to:  
[InvoiceMDHHS@michigan.gov](mailto:InvoiceMDHHS@michigan.gov).

**Note:** If a witness is called to court to testify to drug screen results, payment of the witness fee is not the responsibility of the department, but is a county government/court responsibility.

MDHHS employees are expected to participate in hearings without a subpoena when their testimony is required. If participation of an MDHHS employee cannot be arranged, send a memo to MOAHR giving the name and location of the employee and how the employee's testimony relates to the hearing issue. MOAHR will decide whether to require the employee's participation.

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**Amendment/  
Expunction  
Settlement**

If at any time during the hearing process the expungement analyst believes there is insufficient evidence/witnesses to keep the petitioner on CR or there is evidence that suggests an inaccurate report or record be amended, consultation must be held with the expungement supervisor.

If a settlement is determined after a hearing request has been made, the petitioner must complete the waiver of hearing form. The expungement analyst is to ensure a copy of the form is filed and all actions are completed. The form must be uploaded into the electronic case record within the case *Amendment/Expungement* hyperlink.

**Request for  
Adjournment**

The petitioner or expungement unit may request an adjournment of a scheduled hearing. If an adjournment of a scheduled hearing is needed, the expungement analyst must send a request in writing to MOAHR with a copy to the petitioner. If the adjournment is granted, an *Order Granting Adjournment* will be issued containing the new hearing date, time, and location. If the request for adjournment is denied, the hearing will commence at its originally scheduled date.

**Withdrawal of  
Request for  
Hearing**

A petitioner may withdraw the request for a hearing any time prior to the ALJ issuing a hearing decision and order. When a petitioner wishes to withdraw a request, ask for a signed written withdrawal. The DHS-18A, *Hearing Withdrawal*, form should be used for this purpose. The petitioner must clearly state that they have decided to withdraw the request. The expungement unit analyst must enter all case identifying information on the withdrawal form, attach the original copy to the request, and forward both to MOAHR immediately. File a copy of the withdrawal in the electronic case record.

**Administrative  
Hearing Decision**

The ALJ determines the facts based solely on the evidence at the hearing, draws a conclusion of law, and issues a decision and

order. Copies of the decision and order are sent to the local office and the petitioner. In most cases, the petitioner has the right to appeal the final decision to the Family Division of Circuit Court within 60 calendar days after the decision is received.

The expungement analyst, within two business days of receipt of the Proposal for Decision, reviews the findings of fact and conclusion of the law made within the decision.

If MDHHS agrees with the decision, the expungement analyst will implement the findings as outlined.

### ***Amendment of Case Record***

If MDHHS is required to remove the petitioner from CR or amend an inaccurate report or record, this is to be completed by the expungement analyst within 10 calendar days of receipt of the hearing decision. If edits are required to the Service Plan this must be amended by the expungement analyst within 10 calendar days of receipt of the hearing decision.

The expungement analyst will complete all necessary actions within the electronic case record to comply with the administrative law judge's decision.

A copy of the expungement, as well as the DHHS-1200, *Child Abuse/Neglect - Central Registry Expunction Action*, must be provided to the MOAHR by the expungement analyst. The DHS-1200 must be provided to the local office point of contact who must then provide it to the petitioner.

The expungement analyst must complete the DHS-1844, *Administrative Hearing Order Certification* form within 10 calendar days and send it to the Children's Services Legal Division's [CSARequestforRepresentation@michigan.gov](mailto:CSARequestforRepresentation@michigan.gov) mailbox to certify the implementation of the required action(s).

A copy of the Administrative Hearing Proposal for Decision is to be uploaded into the electronic case record within the case *Amendment/Expungement* hyperlink.

The expungement analyst will provide a copy of the Administrative Hearing Proposal for Decision to the local county point of contact for informational purposes.

## Rehearing/Reconsideration

If MDHHS is not in agreement with the decision, the expungement analyst and expungement supervisor will consult the Office of Legal Affairs and/or the assigned attorney general.

A rehearing is a full hearing, which is granted when the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that could affect the outcome of the original hearing.

A reconsideration is a paper review of the facts, law and any new evidence or legal arguments. A reconsideration is granted when the original hearing record is adequate for judicial review and a rehearing is not necessary but a party believes the ALJ failed to accurately address all the issues.

MOAHR determines if a rehearing or reconsideration will be granted.

The department should file a written request for rehearing/reconsideration if any of the following exists:

- Newly discovered evidence, which could affect the outcome of the original hearing.
- Misapplication of law in the hearing decision, which led to a wrong conclusion.
- Failure of the ALJ to address in the decision relevant issues raised in the hearing request.

The expungement analyst will process and complete a reconsideration within 10 calendar days. The expungement analyst will complete a written formal request for a rehearing/reconsideration.

MOAHR will grant or deny the request and will send written notice to all parties of the original hearing. If MOAHR grants a reconsideration, the hearing decision may be modified without another hearing unless there is need for further testimony. If a rehearing is granted, MOAHR will schedule and conduct the rehearing in the same manner as a hearing.

Pending a rehearing, the expungement unit analyst must implement the original decision and order unless a circuit court or other court

with jurisdiction issues an order delaying implementation of the original decision.

## ADMINISTRATIVE HEARING STEPS

The usual steps for a hearing are:

- Introduction by the ALJ.
- Department representative addresses any administrative issues, such as how exhibits should be labeled, etc.
- Opening statements (first the department, then the petitioner).
- Testimony of witnesses (both direct and cross-examination).
- Closing statements.

Note: If the petitioner fails to appear at the hearing despite proper notice, the department should request to move forward with the hearing for a final decision.

## Role of the ALJ

In general, the ALJ will follow the same rules used in circuit court to the extent practical in the issue being heard. The ALJ must ensure the record is complete and may:

- Take an active role in questioning witnesses and parties.
- Assist either side to ensure that all necessary information is presented on the record.
- Be more lenient than a circuit court judge in deciding what evidence may be presented.
- Refuse to accept evidence that is repetitious, immaterial or irrelevant.

Either party may object on the record stating disagreement with the ALJ's decision to include or exclude evidence. The ALJ must state on the record why evidence was not admitted.

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**APPEALS TO  
CIRCUIT COURT**

Only the petitioner can appeal the results of the Administrative Hearing to Circuit Court. Any legal notices (or example, subpoena, notice and complaint, the Administrative Hearing decision and order, etc.) must be sent to the expungement unit for processing and forwarded to the Bureau of Legal Affairs.

Bureau of Legal Affairs  
Children's Services Legal Division  
333 S. Grand Avenue, 5th Floor  
Lansing, MI 48933  
Phone (517) 284-4853  
[CSARequestforRepresentation@michigan.gov](mailto:CSARequestforRepresentation@michigan.gov)